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#### REMARKS

Claims 1-5, 7-12, 14-16, 18-22, and 24 are in the case.

#### Claims Amendments

Claims 1, 8, and 18 (all of the independent claims in the case) have been amended to more particularly point out and distinctly claim that which Applicant regards as his invention to recite providing a variably select elevation of the longitudinally extending railing. Support for the Amendment is found in Applicant's specification as originally filed at page 6, lines 11-15.

Claim 1 has been amended further to correct an inadvertent typographical error in reciting the T-shaped channel as set forth in original Claim 1.

The Applicant acknowledges gratefully the removal of the rejection to the drawings under 37 CFR 1.83(a).

The Applicant acknowledges gratefully that the Specification objection has been removed.

The Applicant acknowledges gratefully the removal of the rejection to Claims 1-5, 7-12, 14-16, 18-22, and 24 under 35 U.S.C. 112, second paragraph, as indefinite.

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35 USC §102

Claims 1-3, 8-10, and 18-20 stand rejected under 35 U.S.C. 102(b) as anticipated by Case U.S. Patent No. 3,388,892 (hereinafter "Case").

Case discloses a screened highway safety rail having wire fabric.

Applicant's invention as claimed as amended requires a longitudinally extending railing having a novel longitudinal T-shaped channel and vertical flange and perforation rail combination apparatus and method which are nowhere taught or suggested in Case.

A specialized T-shaped channel and vertical flange and perforation apparatus and method as claimed are important for customizing barriers of different lengths and elevations without cutting the rails to form in the field, and without drilling positioning holes or perforations in the railings or fastening the rails to the vertical posts with bolts.

Case discloses a screen extension to existing bridge railings. Case provides above-the-rail as well as inter-rail screening.

The Examiner references Case top rail 82 and line posts 56 and bolts 42c.

Case does not teach or suggest the T-shaped channel apparatus and method as required in Applicant's claims as amended

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because only the upper ends of line posts 56 are fastened by bolts 42c in Case.

The Case line posts 56 are fastened at the lower ends by bolts 60 to post 14.

Applicant's invention as claimed as amended, on the other hand, provides for a variably select elevation to the longitudinally extending safety barrier.

One of the problems of customizing barriers within industrial facilities and consumer businesses, e.g., factory floors or hardware stores, for example, is that barriers of different lengths and having a non-uniformity of distances between vertical support posts, and in elevation, are desired. Installation has been found to require cutting the rails to form, drilling positioning holes or perforations in the railings, and then fastening the rails to the vertical posts with bolts and the like. This on-site fabrication process is time consuming and adds greatly to installation costs.

The apparatus and method of Applicant's invention as claimed provide for a positioning of barrier railings to overcome the problem of the non-uniformity of elevation of the vertical support posts, as the support post connects to the railing, and further provide for a variably select elevation.

Applicant's invention as claimed provides a customized longitudinal railing having a novel specialized channel in

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combination with vertically extending posts having specialized flange segments and specialized perforations so that fastening means slidably embraced within the T-shaped channel and extending through the perforation in the flange segment and thereby fastened to the vertical post, provide a variably select elevation of the longitudinally extending railing, which is nowhere taught or suggested in the Case reference cited as the basis for rejection.

For the foregoing reasons, the rejection of Claims 1-3, 8-10, and 18-20 under 35 U.S.C. 102(b) as anticipated by Case U.S. Patent No. 3,388,892 is based on an insufficient reference and is respectfully requested to be withdrawn.

35 USC §103

Claims 1-2, 4, 5, 7-9, 11, 12, 14-18, 19, 21, 22, and 24 stand rejected under 35 U.S.C. 103(a) as unpatentable over McMullin U.S. Patent No. 3,258,250 (hereinafter "McMullin") in view of Case U.S. Patent No. 3,388,892 (hereinafter "Case").

McMullin discloses reinforcing a bridge rail.

The Examiner references McMullin rail 37, support post 11, and bolt 34.

The McMullin support posts 11 do not provide the specialized flange segments and specialized perforations as required in

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Applicant's invention as claimed to provide a variably select elevation of the longitudinally extending railing.

McMullin specifically recites that "the support post can comprise any suitable structure and be formed in any suitable manner" (McMullin Col. 1, lines 65-66).

The McMullin rail 37 combines with a reinforcing member 38 adapted to be longitudinally interlocked to the rail 37. The reinforcing member 38 is positioned with a second reinforcing member 39 after reinforcing member 39 is positioned behind reinforcing member 38, and bolt 34 causes reinforcing member 39 to be drawn toward reinforcing member 38 to clamp and hold rail 37 from longitudinal movement and provide a reinforced bridge structure.

The McMullin support posts 11 do not provide the specialized flange segments and specialized perforations as required in Applicant's invention as claimed to provide a variably select elevation of said longitudinally extending railing.

The Examiner admits that McMullin does not show another perforation in the other one of flange segments thereby making each of the flange segments having at least one perforation to connect the rail.

The Examiner cites Case to teach a perforation in each flange segment.

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There is no motivation to combine the McMullin and Case references. McMullin discloses reinforcing a bridge and H-shaped support posts structure, and Case discloses a screen extension. McMullin relates to bridge rails, and Case relates to wire fabric. One would not have combined the McMullin and Case references except on the basis of reconstructive hindsight after having had the benefit of Applicant's disclosure.

Assuming, but not granting or admitting, that one would have combined the McMullin and Case references, one would have formed a solid structure not providing the specialized flange segments and specialized perforations as required in Applicant's invention as claimed to provide a variably select elevation for the longitudinally extending railing.

The Case slot 71 is used to fasten the upper ends of line posts 56. The Case slots 71 are not perforations adapted to combine in vertically extending posts with flange segments in the vertically extending post to provide a variably select elevation of the longitudinally extending railing as required in Applicant's claims as amended.

Case discloses a screened highway safety rail having wire fabric. Applicant's invention as claimed as amended requires a longitudinally extending railing having a novel T-shaped channel and vertical flange with perforated apparatus and method which are nowhere taught or suggested in Case. The novel T-shaped

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channel and vertical flange with perforations apparatus and method are important for customizing barriers of different lengths and elevation without cutting the rails to form, and without drilling positioning holes or perforations in the railings or fastening the rails to the vertical posts with bolts and the like.

Case discloses a screen extension to existing bridge railings. Case provides above-the-rail as well as inter-rail screening. The Examiner references Case top rail 82 and line posts 56 and bolts 42c. Case does not teach or suggest T-shaped channel as required in Applicant's claims as amended because only the upper ends of line posts 56 are fastened by bolts 42c. The Case line posts 56 are fastened at the lower ends by bolts 60 to post 14.

Applicant's invention as claimed as amended, on the other hand, provides for a variably select elevation to the longitudinally extending safety barrier.

Applicant's invention as claimed as amended overcomes the problems of customizing barriers within industrial facilities and consumer businesses when barriers of different lengths and non-uniformity of distances between vertical support posts and in elevation are found to require cutting the rails to form, drilling positioning holes or perforations in the railings, and then fastening the rails to the vertical posts with bolts and the

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like. Applicant's invention as claimed as amended overcomes the problem previously experienced in on-site fabrication processes which were hindersome, time consuming, and added greatly to installation costs. The apparatus and method of the present invention provide for a positioning of barrier railings to overcome the problem of the non-uniformity of elevation of the vertical support posts, as the support post connects to the railing, and provide for a variably select elevation.

Applicant's invention as claimed provides a customized longitudinal railing having a novel specialized channel in combination with vertically extending posts having specialized flange segments and specialized perforations so that fastening means slidably embraced within the T-shaped channel and extending through the perforation in the flange segments and thereby fastened to the vertical post to provide a variably select elevation of the longitudinally extending railing, which is nowhere taught or suggested in the case reference cited as the basis for rejection.

For the foregoing reasons, the rejections of Claims 1-2, 4, 5, 7-9, 11, 12, 14-18, 19, 21, 22, and 24 stand rejected under 35 U.S.C. 103(a) as unpatentable over McMullin U.S. Patent No. 3,258,250 (hereinafter "McMullin") in view of Case U.S. Patent No. 3,388,892 is based on an improper combination of references



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and further is based on insufficient references and is respectfully requested to be withdrawn.

The prior art made of record newly cited in the Office Action has been reviewed but is not believed to be a basis for rejection.

Formal acceptance of the drawings is earnestly solicited.

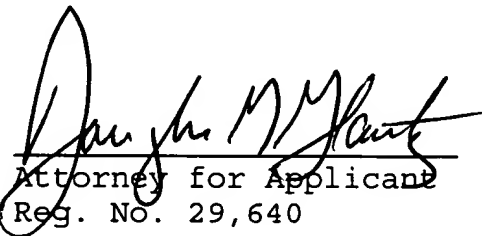
This Amendment After Final under 37 C.F.R. §1.116 is being filed within two months of the mailing date of the Final Office Action and qualifies for Expedited Examination Procedure. Two months from the mailing date of the Office Action fell on January 19, 2004. However, January 19, 2004 was a national legal holiday, Martin Luther King Day. Accordingly, this Amendment After Final is timely filed and qualifies for Expedited Examination Procedure.

Reconsideration of this Application is requested.

Respectfully submitted,

January 20, 2004

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